IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 27109 of 2005(B)

PETITIONER:

R.MURTHY, S/O.RAMASWAMY, HINDU,
AGED 53 YEARS, RESIDING AT JAGATHY,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAMASWAMY PILLAI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

3. THE DEPUTY TAHSILDAR,
THIRUVANANTHAPURAM.

4. THE VILLAGE OFFICER,
SASTHAMANGALAM, THIRUVANANTHAPURAM.

5. MUHAMMED ISMAIL,
S/O.IBRAHIM PILLAI, AGED 41 YEARS,
RESIDING AT T.C.20/2058, TAJ MANZIL,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE --- R5
GOVERNMENT PLEADER SRI. R. LAKSHMI NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON13/09/2007, THE COURT ON 24/09/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 27109/2005 B

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE RECEIIPT EXECUTED BY THE R5.

EXT.P2. COPY OF THE ORDER BY THE RENT CONTROLLER IN RCP NO. 11/04.

EXT.P3. COPY OF THE ORDER IN RCP NO. 11/2004.

EXT.P4. COPY OF THE RR NOTICE.

EXT.P4A. COPY OF THE RR NOTICE.

RESPONDENT'S EXHIBITS **NIL.**

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.27109 of 2005-B

Judgment

Balakrishnan Nair, J.

The petitioner has approached this Court, challenging Ext.P3 order of the Rent Controller in RCP No.11/04 impounding a document, on the ground of insufficiency of the stamp duty paid and also directing him to pay a total amount of Rs.26,103/- as stamp duty and penalty under Section 34(a) of the Kerala Stamp Act. In the prayer, the exhibit challenged is typed as Ext.P1. The learned counsel for the petitioner submitted that it is a typographical error and what is meant is Ext.P3. He also challenges Exts.P4 and P4(a) notices issued under Sections 7 and 34 of the Kerala Revenue Recovery Act, proposing to recover the above said amount. The brief facts of the case are the following :

2. The petitioner was the tenant of a building bearing Door NO.TC/38/1514(1) in Pazhavangadi, Thiruvanthapuram. At the time of occupying the building, he executed a rent deed in favour of the landlord and

paid an advance amount of Rs.4,500/-. The petitioner also paid a amount of Rs.95,500/- as security deposit. The landlord, who is the 5th respondent herein, also executed a receipt in a stamp paper worth Rs.15/-. The said document also contains the undertaking of the landlord to refund the said amount of Rs.95,500/- to the petitioner, on giving vacant possession of the building. Ext.P1 is the said document. The landlord moved the Rent Control Court for eviction, under Sections 11(2), 11(3), 11(4) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965. During the trial of the case, the Rent Controller held that Ext.P1 document was a bond and therefore, the stamp duty of Rs.2,388/- was payable on it. After deducting Rs.15/- being the cost of stamp paper, the balance amount payable was Rs.2,373/-. Since the said amount was not paid, a penalty of ten times i.e., Rs.23,730/- was also imposed under S.34(a) of the Stamp Act for the said default. The said order Ext.P3 was passed on 07.08.2004. Later, the Rent Control Petition was dismissed as per Ext.P2 order dated 18.08.2004. But, it was ordered that the above amount should be realised from the counter petitioner in the RCP, who is the writ petitioner herein. The relevant portion of Ext.P2 order reads as follows :

> *"The counter petitioner has produced a document which is marked as Ext.B3, which is not sufficiently stamped. Though the counter petitioner understood (sic - undertook) to pay the stamp duty and penalty on Ext.P3, the same is not seen paid by him. So, the office shall take necessary steps to realise the stamp duty and penalty of Ext.B3 from the first counter petitioner."*

When the above said amount was not paid, revenue recovery steps were taken and Exts.P4 and P4(a) notices were issued. On receipt of those notices, this Writ Petition was filed under Articles 226 and 227 of the Constitution of India, challenging Exts.P3, P4 and P4(a).

3. The challenge against Ext.P3 is under Article 227 and the challenge against Exts.P4 and P4(a) is under Article 226 of the Constitution of India. According to the petitioner, Ext.P1 is not a bond. Therefore, Ext.P3 is unsustainable. In support of his contentions, the decisions of this Court in **Mathai Mathew v. Thampi** (1989(1) KLT 138),

Sreedharan v. Gopi (2003(2) KLT 372), **Krishnankutty v. Jayakrishnan** (2005(2) KLT SN 26 Case No.32) and **Chamiyappa Mannadiar v. Danavan** (2007(1) KLT 733) were relied on.

4. The learned Government Pleader appearing for the respondents, on the other hand, submitted that against Ext.P3, the petitioner had a statutory remedy under the provisions of the Kerala Stamp Act. He has failed to invoke it. Therefore, this Writ Petition, filed against it, is not maintainable, it is submitted. Going by Ext.P2, it is submitted that the petitioner herein undertook to pay the stamp duty and penalty. That is the reason, why the petitioner did not challenge the imposition of penalty in time before the statutory authority, it is contended. The present Writ Petition is filed only on 09.09.2005, after the lapse of more than one year, it is pointed out and that too, only when the revenue recovery notices were issued. Those notices are only consequential proceedings, it is submitted.

5. The documents in respect of which stamp duty is not paid or which are insufficiently stamped, cannot be admitted in evidence before the Rent

Controller. But, Section 34(a) of the Kerala Stamp Act, 1959, provides that such documents can be received in evidence on payment of the duty or the deficit duty, as the case may and also, on paying the penalty provided therein. The said provision reads as follows :

> "S.34 : **Instrument not duly stamped inadmissible in evidence,** etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :
>
> Provided that-
>
> (a) any such instrument not being an instrument chargeable with a duty of twenty paise or less than twenty paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a

> penalty of five rupees or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion".

Ext.P1 document was admitted in evidence under the above provision. The petitioner was directed to pay stamp duty along with fine as per Ext.P3. On the undertaking given by the petitioner to pay the same, the said document was admitted in evidence. The said undertaking will be evident from the relevant portion of Ext.P2, which is already quoted above. As per the undertaking, the petitioner failed to pay the amount. Therefore, the Revenue Recovery Authorities were informed by the Court and Exts.P4 and P4(a) notices were issued.

6. We notice that there is a delay of one year in challenging Ext.P3. The stand of the respondents that the petitioner had a statutory remedy, appears to be not correct. Since no statutory remedy was available, he could have approached this Court under Article 227 of the Constitution. The petitioner has not chosen to challenge Ext.P3, immediately after it was pronounced. He took advantage of that order, based on which Ext.P1 was marked in evidence. Thereafter, after the lapse of

one year, when the amount due under Ext.P3 was sought to be recovered, the challenge is raised under Article 227 of the Constitution. We feel that the petitioner cannot be permitted to do that. His conduct disentitles him to challenge Ext.P3 under Article 227. He is guilty of delay and laches also. Exts.P4 and P4(a) are only dependent orders issued, as Ext.P3 has become final. So, they are orders, issued within jurisdiction. Therefore, the challenge against them is also unsustainable. In this view of the matter, we are not inclined to go into the contentions of the petitioner, concerning the nature of Ext.P1. In other words, we do not feel that this is a fit case, where this Court should decide the question whether Ext.P1 is a bond or not. In the result, the Writ Petition is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

24.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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